EMERGING TRENDS OF RIGHT TO PRIVACY WITH SPECIAL REFERENCE TO RIGHT TO BE FORGOTTEN

A

Synopsis

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DECLARATION

I, **Debaditya Das** a Research Scholar of Degree of Philosophy in Law of Faculty of Legal Studies, University School of Law, Desh Bhagat University, Mandi Gobindgarh, Punjab with Roll No. 21380402003 do hereby declare that this Synopsis of Research work on "**Emerging Trends of Article 21 of Indian Constitution With Special Reference To Right To Be Forgotten"** is an original work of me and is a result of my intellectual efforts. I have quoted titles of all original sources i.e. original documents and name of the authors whose work has helped me in writing this research work has been placed at appropriate places. I have not infringed the copyrights of any other author.

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a. INTRODUCTION

According to Salmond Right is an interest recognized and protected by law of land. In other sense right is a power and capacity of person recognized by the government of the country. Liberals thinkers hold the moral primacy of the individual as the foundation for thinking about politics and society, the equality of all people in terms of moral value regardless of class, nation, gender, or colour, and the potential of transforming political institutions and social situations. People are thought to be the holders of rights that exist irrespective of the government and that the government's job is to safeguard well a governing system upholds the rights of its people determine its legitimacy[1]. In primarily stage, the right in the form of human right then converts in fundamental right after recognized by municipal law. Our Indian constitution also incorporated prominent fundamental rights under Part- III Article 12 to 35. With development of digital era impacts rights of person related right to privacy, personal data security, etc. nowadays, privacy is intrinsic dignity and lengthy to right to be forgotten. Development of science and technology, change way of life promotes these types of rights.

The right to be forgotten gives an individual or individuals the option of removing their private information from the internet in certain situations. The phrase right of something erasing also refers to the right to be forgotten. A limitless amount of time is allowed for the storage of personal data. The European Union initially recognized the Right to be forgotten in May 2014. There is currently no specific law or other provision in India that assurance of the right to be forgotten. But changing digital society demands protection of right to be forgotten. New the Personal Data Protection Bill has presented to the Lok Sabha on December 11 by Ravi Shankar Prasad on behalf of the Ministry of Electronics and Information Technology. This Bill has not yet been approved by the Parliament. The Personal Data Protection Bill's primary goal is to safeguard each person's right to privacy. Right to forgotten is not defined under Indian constitution only found in judgment of the Indian Judiciary in 2017. The Personal Data Protection Bill, 2019 is mentioned word

[1]George Ritzer & J. Michael Ryan, The Concise Encyclopedia of Sociology 355 (2011)

forgotten right under clause 20. According to clause 20 rights to forgotten part of the data principal which talk about restriction & prohibition to anyone continue release personal data it is also part of right to privacy. Data fiduciary is a prominent identity of any person that concerns state, legal entities i.e. company, NGOs, individuals and juristic units, etc. The users can correct his personal information when needed. Right to Privacy is the fundamental right under Article 21 of the Constitution of India and it is the most valuable fundamental right extended to be forgotten. According to Article 21 every person entitled right to life & personal liberty. There person word includes citizens and non-citizens also. So that Article 21 is footing of other fundamental rights like equality, privacy protection, social justice, non-discrimination, gender justice, religious & linguistic freedom, use the internet, etc. the Apex Court has explained in ***Justice K.S. Puttaswamy (Retd.) and Anr. Vs. Union of India***[2], the individual has the authority to regulate over his personal data. Individual must be able to regulate his existence over cyber space. Information on the internet is permanent as a result of the effects of the digital era. Although people forget, the internet does not and will not allow people to forget. Any attempt to delete material from the internet does not completely eradicate it. The tracks are still there. Thus, it is argued that forgetting is a battle and preservation is the norm in the digital age[3].

In the case of ***Zulfiqar Ahman Khan Vs. M/S Quintillion Business Media Pvt. Ltd. And others***[4]**,** Zulfiqar Ahman Khan demanded that articles critical of him be taken down from the news website. According to the Delhi High Court, a person's life and existence depend on their ability to be forgotten and left alone. Both are included in Article 21 of the Indian Constitution. Today's internet community has started to evaluate someone's honesty. Knowledge of internet communication must demonstrate the specifics of human lives, both good and bad. Our privacy is being violated. The individuals are spreading rumours online about other people. A person's private information is no longer kept

[2](2017) 10 SCC 1
[3]Ibid.
[4] Laws(DLH)-2019-5-101.

secret in the modern world. Nowadays, people search online and can obtain any information they need. Sometimes anyone has committed a crime as a result of an internet search. It allows a person to delete of private information from the Internet. Despite the fact that the right is not recognized by Indian law, courts have recently determined that it is an essential component of the right to privacy. The Delhi High Court is currently hearing a number of applications asking for the deletion of personal data from the Internet, court documents, and press accounts of the past. Only a few issues have thus far been successful in obtaining that redress from courts. The Delhi High Court has expressed significant judgment of the K. S. Puttaswamy (2017).The decision was milestone in the history of right to Privacy. The Court said that the right to be forgotten idea is addressed in the Personal Data Protection Bill. According to the Orissa High Court, such a right will be enforced through the process of court if necessary. At present, there is no law and other constitutional provision in the country. The Right to be forgotten, requiring erasure of data when it is not needed or following revocation of consent by the subject is recognized under the General Data Protection Regulation[5] , Europe's digital privacy law.

The technology creates what is essentially a permanent store in some form, making it challenging to start over and learn from prior mistakes. People adapt and develop throughout their lives; they are not static. They change. They make errors. However, they have the right to reinvent, change, and learn from their errors. This skill is fostered by privacy, which also frees one from the constraints of any regrettable previous actions.

Currently, in India there is no legal framework in regards to Right to be forgotten or right to erasure. In ***Dharmaraj Bhanushankar Dave Vs. State of Gujarat***[6], it is the first case in India that dealt with the concept of the right to be forgotten which was held in the Gujarat High Court. The petitioner had pleaded a case for the removal of a published

[5]GDPR
[6]Special Civil Application No. 1854 of 2015

judgment in which he had been released. The Court did not grant an order for the removal of the published judgement, as the petitioner had not been able to point out specific provisions of law that had been violated. Hence, petitioner couldn't seek any remedy due to lack of legal framework. The concurrent judgement delivered by Indian Supreme Court in the ***K.S. Puttaswamy Vs. Union of India, (2017)*** a vital component of an individual's autonomy and privacy is tied to the significance and enduring worth of privacy and the right to be left alone. The Supreme Court had already noted that the right to be forgotten correlate with personal data impact. Thus the right to solitude were accepted by the court as essential elements of the right to privacy. Following that, the right to privacy was extended to cover both actual and virtual spaces, such the internet and social media.

Justice Sanjay Kishan Kaul stated that the individual has a right to regulate over his personal data for the purpose of existence on cyber space.

In ***Sri Vasunathan Vs. The Registrar General & Ors***[7], petitioner filed to remove only the name of his daughter from the cause title because it would cause harm to her reputation. The Court held the decision in favour of the Petitioner. The judgement indicated right to forget is a fundamental right under right to privacy.

In ***State of Punjab Vs. Gurmeet Singh and Ors***[8] the Apex Court, anonymity can lessen the risk of social exclusion for sexual assault victims. The forgotten right is a very helpful for sexual assault victim and other persons by mistake committed crime.

In ***Prem Shankar Shukla Vs. Delhi Administration***[9] A three-judge Supreme Court bench led by Justice Krishna Iyer declared that the guarantee of human dignity, which constitutes part of our constitutional tradition.

[7] W.P. No. 62038/2016.
[8] MANU/SC/0366/1996
[9]MANU/SC/0084/1980

In ***Sredharan T Vs. State of Kerala***,[10]case the Kerala High Court acknowledged right to life extended right to Privacy and privacy rights extended forgotten right. Waiver petition was submitted. The petitioner asked the court for instructions on how to have the rape victim's name and other personal details removed. The court was recognising the Right to be forgotten and issued an interim order directing to remove the name of the petitioner on its website until further orders were issued.

In ***Dharamraj Bhanushankar Dave Vs. State of Gujarat***[11], the 'Right to be Forgotten' was not acknowledged by the Gujarat High Court. In this instance, the petitioner was accused of murder, kidnapping, and other crimes. Later, the Sessions Court freed the petitioner. This Session Court Judgment which was further supported by a Division Bench of the Gujarat High Court. The petitioner had claimed that until the judgment was non-reportable, no publishing made on the internet because it effects the petitioner's personal and professional life. The High Courtfound that such publication did not violate Article 21 of the Indian Constitution, and that the petitioner had no legal basis to prevent the respondents from publishing the judgment.

In ***Sri Vasunathan Vs. Registrar General***[12], Court has impartiality had noted that this was part of the trend in western countries of the Right to be forgotten in delicate circumstances concerning women. She had upheld a woman's Right to be forgotten.

The High Court recognised "Right to be forgotten." The purpose of this case was to remove the name of the petitioner's daughter because it defames her reputation. The court held the judgment in favour of the petitioner. The court held that "Right to be forgotten" is applicable as a rule in sensitive cases concerning women.

[10]Writ Petition No. 9478 of 2016
[11]MANU/GJ/0029/2017.
[12]Writ Petition No.62038 of 2016

In ***Subranshu Raot Vs. State of Odisha***[13], The Orissa High Court considered the Right to be Forgotten as a remedy for those who have been harassed by sexually explicit recordings or images often shared on social media.

In the case of ***Zulfiqar Ahmad Khan Vs. Quintillion Business Media Pvt. Ltd***.[14], Right to be forgotten was supported by the Delhi High Court. In that situation, Defendants wrote two articles accusing Plaintiff of harassment by the reason plaintiff claim against him. The Court has held that right to privacy also inherent the Forgotten right as well as Right to Be Left Alone.

From above judgment, it is quite clear that Judiciary considered that the "Right to be forgotten" is a fundamental right. It is an inherent part of privacy, which is linked with article 21 of Indian constitution of India.

In the case of ***Kharak Singh Vs. State of UP***.[15] held that Right to Life includes personal liberty and thus, right to privacy collected from Article 21 of the Indian constitution.

In the case of ***Subhranshu Rout @ Gugul Vs. State of Odisha***[16],by creating a bogus profile on Facebook, the accused posted intimate images of the victim after having sexually assaulted her. According to the Odisha High Court, no one would desire to develop and showcase her character's grey areas. Women are the victims in a lot of situations. They have the right to enact the right to be forgotten as an *in rem* right. However, lack of legal framework has made for right to be forgotten. For instance, what would be the ambit of a proposed right to be forgotten? Does it only remove a search result from a search engine?

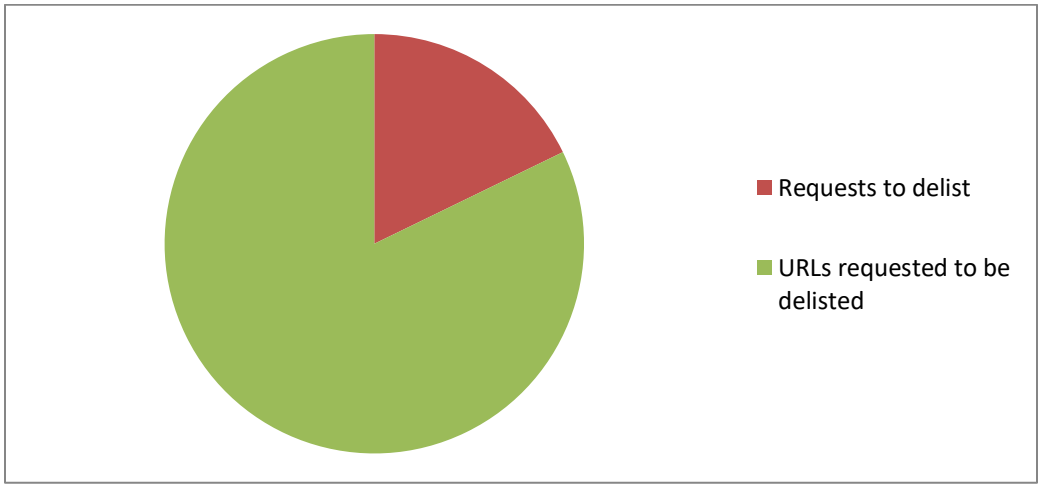
[13]WP (C)/4159/2020
[14] CS (OS) 642/2018
[15]MANU/SC/0085/1962
[16]BLAPL No.4592 of 2020, (HC Orissa)

Under the direction of the B.N. Srikrishna Committee, the Personal Data Protection Bill, 2019 was created in place of such inquiries.

According to section 20 of the bill, the right to be forgotten is granted. Additionally, the committee placed great emphasis on obtaining an individual's consent to handle and use their personal information. According to the committee, consent must be freely given, clear, and capable of being revoked just as successfully as it was granted.

The Court of Justice of the European Union concluded in a decision in 2014 that people have the right to request that specific results concerning them be removed from search engines like Google. The volume of requests, the URLs delisted, the users submitting requests, and the content of websites and URLs identified in requests are all covered by the statistics in this report[17].

In 2014	
Requests to delist	153,682
URLs requested to be delisted	709,693



In 2014 Recognized Right to be forgotten in EU countries

[17]Demands to remove content from lists under European privacy laws, Assessed on 13.12.2022 from- https://transparencyreport.google.com/eu-privacy/overview?hl=en&requests_over_time=country:GB&lu=requests_over_time.

In the case of **Google Spain SL,Google Inc.** v **Agencia Española de Protección de Datos (AEPD),Mario Costeja González[18],** According to the ED Court, the purpose of national laws to protect personal data because it is a part of fundamental rights and freedoms. Protection of fundamental rights including personal data is responsibility of governing and administering body of country. Rather, result in a greater level of protection for the right to privacy, which is protected by both Article 8 of the ECPHR[19] as well as recognized by Fundamental Freedoms. In European country, forgotten rights also supported by the general principles of Community law.

b. STATEMENT OF THE RESEARCH PROBLEM

Right to privacy is basis of Right to life and dignity. Right to be forgotten is extension of the Right to Privacy in digital era. Right to be forgotten is new interpretation of the Article 21 as well as inherent in right to privacy. Right to Privacy is an associated of the right of the individual to exercise control over his or her personality. It finds an origin in the notion that there are certain rights which are natural to or inherent in a human being. Natural rights are inalienable because they are inseparable from the human personality. Article 21 guarantees each citizen the right to life and personal freedom. According to the Supreme Court, the right to life guaranteed by Article 21 encompasses more than only the ability to survive and the right to a dignified life. The Supreme Court expended the Article 21 for the better development of individual's life. A civilized society cannot progress without establishment of the right to health, right to livelihood, right to food, water, education; right to medical care and shelter; right to health and medical aid of workers; right to freedom from noise pollution; right to social justice and economic power etc.

[18] ECLI:EU:C:2014:317
[19]European Convention for the Protection of Human Rights.

The question 'what is Right to be forgotten' had therefore, remained a problem for those who had madean attempt to define it?There is no proper definition of Right to be forgotten. Many people who are not aware about Right to Forgotten. In India, currently there is no law and constitutional other provisions that specifically provides the Right to be Forgotten.

c. LITERATURE REVIEW

Mr. Anuprash Rajat & Mr. Gaurav Bharti[20] say Right to be forgotten[21]demand of use & security of internet in the context of personal data. The right to privacy now includes the right to be forgotten, according to the Supreme Court. The court mandated that personal data used in matrimonial disputes be improved. Her personal information needed to be either deleted or covered up, the bench reasoned, because the decision had already been made public. Despite the fact that the woman's identity was kept secret, the judgement printed the name of her husband, suggesting the point of connection. She felt that her right to privacy was being infringed by this public exposure. In this situation, the right to be forgotten is necessary. The Delhi High Court issued a ruling recognising the right to be forgotten in 2021.

Ajay Pal Singh & Rahil Setia[22]has explained the desire of a person to have certain data removed from the internet is known as the right to be forgotten. If information is removed from specific online records, making a search impossible. The source of this right can be traced back to the French jurisprudence. The adoption of such a right isnot only controversial but also debatable at the same time. Furthermore, there is an apparent clash with the right to freedom of expression.

Manasvi Gupta[23]**say** in today's age where all information is available at a click it is vital to protect one's privacy. Court of Justice of the European Union held that Google must

[20]Mr. Anuprash Rajat & Mr. Gaurav Bharti, Indian Journal of Law and Legal Research, Volume IV Issue IV, ISSN: 2582-8878.
[21]RTBF
[22]Ajay Pal Singh & Rahil Setia, Nirma University Law Journal: Volume-6, Issue-2, December-2018
[23]Manasvi, Gupta,International Journal of Law Management & Humanities, Vol.4 Issue 3; 586] [2021].

accurate any data which is shown on internet, if the person give request with proper proof on it. The decision of the court was limited to territories.

Nikhil Aswani[24] say in today's world, where technology has render into almost every aspect of our lives, information can easily be accessed on the internet. The internet has taken the world by a storm and the tides just flow in its favour and do not seem to slow down. Personal information is increasingly stored on the internet for unlimited period. Due Digital age, there has changed the trend from forgetting things to remembering things permanently and our digital identities are shaped by the online interactions leaving behind a permanent digital footprint, and this is the sole reason why people are now concerned with the removal of their personal information.

It is in this context that the "Right to be forgotten" was introduced into the European Union with great passion and enthusiasm, which was hailed as a new dawn in data privacy protection on the internet. General Data Protection Regulation was introduced shortly after, to provide people with a "Right to be Forgotten" so that they could request data controllers to erase their personal information in certain circumstances.

The author explains for the enforcement of such a right in India as it is legally sound and analyses the possible legal hurdles in recognizing such a right.

According to **Samridhi Talwar**[25]**,** the right to be forgotten has become increasingly popular in the rapidly-evolving digital age. Anyone can publish and access anything on the sensitive internet. The right to be forgotten was born out of the desire to remove content from the internet. The removal or erasure of outdated and irrelevant personal data is primarily addressed under this right. The Right to Be Forgotten is also permitted in the EU and other European Countries, despite the fact that it is still in its infancy.

Dr. Jayashree Khandare, Rutuja Suryawanshi[26]saysin the present times, it is said that 'A man should search himself on the Internet once in a while'. Technology being at the

[24]Nikhil Aswani, International Journal Of Legal Developments And Allied Issues Vol. 6 Issue 3, [2020]
[25]Corpus Juris The Law Journal ISSN: 2582-2918

[26]Journal of Positive School Psychology 2022, Vol. 6, No. 4, 2705 – 2709

footsteps of every person, it makes it even easier to search anything and everything under the sun, the moon and the universe and things which are hidden in the Earth. And to this the 'human beings' are not an exclusion. However, the phrase, 'Right to be forgotten' or 'Right to Erasure' has rescue of the persons who wish to forget the past not only for himself but also for the world. The roots of Right to be Forgotten have found in Indian judiciary system at present.

Naman Khatwani[27] explain social media is the most important and essential tool for most people, where they place great emphasis on their image. This image is what makes them recognizable compared to other individuals and hence is an important aspect. While the right to create and present an individual's own identity has acquired great importance, it does not include the right to hide. The decision of CJEU has enlarged. There shall a focus on right where the legislative policy and judicial decisions shall be analysed.

Mrs. Niti Nipuna Saxena & Mrs. Jyoti Panchal Mistri[28] explains the right to personal liberty takes to be released from limitations set on his developments. Our Constitution does not explicitly promulgate a privilege to security as a Fundamental Right. The Right to Privacy is a basic and inborn right of each individual being. The extent of the "right to protection" was ensured under Article 21. The "right to security" signified an option which is not to mention. "**Right to security**" is the most important right under Article 21 of the Constitution. Right to be Forgotten is a part of Right to Privacy as enshrined under Article 21 of Constitution of India.

Piyasha Das[29]say the scope of Article 21 of the Indian Constitution which secures two rights namely, Right to Life and Right to Personal Liberty which had widened its scope. Art. 21 have been interpreting the right to life to include finer values of life and right to proper healthy livelihood. Right to personal liberty include right to privacy, right to travel abroad and various others. The framers of the Indian Constitution remember in mind the basic Human Rights. Universal Declaration of Human Rights (1948) provided protection

[27]Ibid.
[28]2021 IJCRT | Volume 9, Issue 5 May 2021 | ISSN: 2320-2882
[29]International Journal of Law Management & Humanities [Vol. 3 Issue 5; 424][2020]

of life and personal liberty of every citizen. Article 21 is available to both the citizens and also to the non-citizens. Article 21 is safeguarding the basic human rights without discrimination. Article 21 has a very wide scope. But sadly Article 21 does not merely exist in the properly.

Komal Khare & Devershi Mishra[30]says Privacy laws around the world posit has a slide difference with two constitutional freedoms: right to privacy and right to freedom of speech and expression. The Court of Justice of the European Union (CJEU), recently adjudicated on a case filed by a Spanish citizen and espoused the right to be forgotten that would be available to all citizens to delete information appertaining to him online, if the information was irrelevant, inadequate, or excessive. Privacy and data protection laws are extensively established in the European Union (EU) jurisprudence, and frequently override free speech provisions in many cases. The paper analyses judicial pronouncements to assert the unconstitutionality of the right and conclusively avers that the right to be forgotten is a manifestation of censorship.

d. GAP IN RESEARCH

There is a huge gap from starting to now no particular law is available related to right to be forgotten. This is the only interpretation of Article 21 by Indian Judiciary. Court already gave many judgments on this principle. If discuss the gap in research, so we can say currently, in India there is no legal framework in regards to Right to be forgotten or right to erasure. As soon as possible, Parliament will be made Law. Only Article 21 is basic source of the Right to be forgotten.

e. NEED OF THE STUDY

A myriad of factors led to the observation that it was urgently necessary for rights to be forgotten. The first one is the crucial demand for controlling the World Wide Web. For data subjects, the combination of irrefutable online content& no effective control available in the country. It is operative tool to protection of access to online information.

[30]CALQ (2017) VOLUME 3 ISSUE II

The urgent need for the right to be forgotten is particularly evident because it extends the boundaries of digital privacy rights. Personal data protection falls under the definition of the right to privacy. Online data privacy violations are easy to commit, and they take many forms, from tracking and spying to profiling and improper use of personal data. These violations of data privacy have a profound effect on people's life. Therefore, the right to be forgotten will provide enough defence against such unjustified exploitation.

f. OBJECTIVES OF RESEARCH WORK

The major objectives of this study are included:

1. To analyse judicial reaction in the furtherance of the right to be forgotten. To Understand conceptual meaning of right to be forgotten. To find out how legal system had protected to right to be forgotten. To Study emerging trends of Right to Life, Right to Privacy in the context of right to be forgotten.
2. To analyze the legal protection of the right to be forgotten at national and international level. To find out the systematic evolution of Right to privacy in historical perspective.
3. To explore the legal provisions of the Indian legal system to identify and highlight the status of the right to privacy and extent of the protection enshrined in those legal provisions.
4. To highlight the emerging challenges of new technological age and point out as to how and to what extent the legal system had protected the right to privacy.
5. To evaluate judicial response in the furtherance and extension of the right to privacy & right to be forgotten.

g. SCOPE OF RESEARCH WORK

Article 17 (1) of the Data Protection Regulation[31]estimated limitation & extension of the forgotten Right or Right to erasure**.** The right also subjected under reasonable restrictions under Article 19(2) of Indian Constitution. Additionally, the data subject has the right to demand that the processing of their personal information cease; this right is unassignable, similar to a property right, and it cannot be waived. The specification of the addressee being required to abide by an erasing complaint represents a specific limitation right to be forgotten. Only the controller of the data is subject to the responsibility to erase specific data upon request, as per Article 4(5) and (6) DPR in connection with Article17 DPR. Internet intermediaries will only be obligated to comply with these requirements if they can be recognised as data controllers with respect to material that was created by third parties.

h. RESEARCH QUESTION

1. Is the right to be forgotten defining under Indian constitution?

2. How does it enforce on people?

3. What provisions of Constitution is govern the right to be forgotten?

4. Whether "Right to be Forgotten" has been recognized Indian Legal System?

5. How many people know about those rights?

6. Whether Indian judiciary has supported the right to be forgotten?

[31]DPR

i. HYPOTHESES

A Hypothesis is a proposed explanation for a phenomenon that-

1. There is lack of Awareness regarding Right to be forgotten.
2. Right to life is inherent Right to Privacy and its extended Right to be forgotten.
3. The Constitutional protection does not include data Privacy Protection Law directly.
4. In India, there are no specific provisions / sections dealing with the concept of Right to be forgotten and definition of Right to be forgotten.

j. RESEARCH DESIGN

1. RESEARCH METHODOLOGY

Data will be collected from primary sources which mainly included Reports of Law Commission, judicial verdicts etc. Books written by eminent scholars, articles and research papers published in national and international journals of repute were consulted. Thus, both primary and secondary sources will be used for the completion of this study.

2. TENTATIVE CHAPTER PLAN

Chapter- I: 'Introduction' may reflect on concept, statement of problems, literature review, gap in research, need of study, objective, scope of the study, delimitation of the study, research question, hypothesis, research methodology, etc.

Chapter- II: 'Historical Perspective on Right to be Forgotten under this chapter the researcher find out the conceptual meaning and relevancy ofthe right to be forgotten at present & future time. Literature review also will be analysing by researcher in this chapter.

Chapter- III: Constitutional Foundation the Right to Be Forgotten may reflect on European Union and the Right to be forgotten. And discuss on fundamental rights, directive principles of state policy, various status, international conventions and treaties.

Chapter- IV: 'Regulatory Mechanisms to Implement the Right to Be Forgotten' may reflect on The Data Protection Bill ("the Bill") has inserted a separate provision for the Right to be Forgotten which allows an individual to restrict or prevent disclosure of their data.

Chapter- V: Judicial Pronouncement of Right to be Forgotten in India' may reflect on Justice K.S. Puttaswamy (Retd.) and Anr. v. Union of India

Chapter- VI: 'Conclusion and Suggestion' may reflect a number of findings and suggestions for recommendation of model legislations.

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